

AUG 22 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MAURICE DONNELL COOPER,

Defendant - Appellant.

No. 07-10512

D.C. No. CR-07-00066-JCM-  
GWF

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
James C. Mahan, District Judge, Presiding

Submitted August 12, 2008<sup>\*\*</sup>  
San Francisco, California

Before: THOMPSON and WARDLAW, Circuit Judges, and BOLTON,<sup>\*\*\*</sup> District  
Judge.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

<sup>\*\*\*</sup> The Honorable Susan R. Bolton, United States District Judge for the  
District of Arizona, sitting by designation.

Defendant-Appellant Maurice Donnell Cooper timely appeals his conviction of one count of attempted bank robbery and three counts of bank robbery, in violation of 21 U.S.C. § 2113(a). Cooper argues that the district court erred in allowing the use of DNA evidence at trial where the government failed to comply with discovery obligations as set forth in Rule 16 of the Federal Rules of Criminal Procedure, the joint discovery statement and local rules. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The record shows that the government disclosed the DNA materials as soon as the materials were received, which was six days before the trial began and eight days before the government's DNA expert testified. Cooper has not shown how the lateness of the disclosure prejudiced his defense to the extent that he was "prevented from receiving his constitutionally guaranteed fair trial." *United States v. Shelton*, 588 F.2d 1242, 1247 (9th Cir. 1978) (quoting *United States v. Miller*, 529 F.2d 1125, 1128 (9th Cir. 1976)). As a result, we do not have "a definite and firm conviction that the district court committed a clear error of judgment," *United States v. Benavidez-Benavidez*, 217 F.3d 720, 723 (9th Cir. 2000), when it decided to admit the DNA evidence.

**AFFIRMED.**